

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

IN THE MATTER OF

CLAY KRHOVJAK
686 Fm 1371 Rd.
Bellville, TX 77418-9513

and

PAUL COCHRAN
8410 Plum Lake Drive
Houston, Texas, 77094,

CFTC Docket No. 02-01

**COMPLAINT AND NOTICE OF
HEARING PURSUANT TO SECTIONS
6(c) AND 6(d) OF THE COMMODITY
EXCHANGE ACT, AS AMENDED**

The Commodity Futures Trading Commission (the "Commission") has received information from its staff that tends to show, and the Commission's Division of Enforcement ("Division") alleges:

I.

SUMMARY

1. From at least June 28, 1996 through October 29, 1996, Clay Krhovjak ("Krhovjak") and Paul Cochran ("Cochran"), employees of Coastal Corporation ("Coastal"), together with other participants who are not respondents in this action, engaged in a fraudulent scheme to misappropriate futures trades of, and to trade ahead of futures trades placed by, Coastal, its subsidiaries or divisions. Profits from such

wrongful futures trading were diverted to an account controlled by another scheme participant, and distributed to Krhovjak and Cochran in a variety of ways.

II.

RESPONDENTS

2. **Clay Krhovjak** resides at 686 Fm 1371 Rd., Bellville, TX 77418-9513.

Krhovjak has never been registered with the Commission in any capacity.

3. **Paul Cochran's** last known residence address was 8410 Plum Lake Drive, Houston, Texas, 77094, and he may still reside there. Cochran has never been registered with the Commission in any capacity.

III.

FACTS

4. Coastal, directly and through its various subsidiaries and divisions, formerly engaged in petroleum refining, marketing and distribution, natural gas transmission and storage, and oil and gas exploration and production from its world headquarters in Houston, Texas. Coastal was merged with El Paso Corporation in January 2001, and El Paso is the surviving entity.

5. Between at least June 28, 1996 and October 29, 1996 (the "relevant period"), Coastal traded in crude oil, heating oil and natural gas futures contracts on the New York Mercantile Exchange ("NYMEX"), primarily to hedge the value of its positions in raw materials and refined products. Coastal's in-house traders frequently used a NYMEX floor brokerage entity known, at various times, as Refined Energy, Inc., Refined Executions, Refined Energy Executions, Inc., Fine Energy, Inc., Fine Energy

Executions, Inc., and Fine Executions (collectively, “Refined”) to execute Coastal's trades.

6. During the relevant period, Krhovjak and Cochran were each Assistant Vice Presidents of Coastal’s commodity futures trading operation. Krhovjak performed risk analysis for Coastal and made determinations concerning the types and quantities of energy futures that Coastal would buy and sell on commodities markets to hedge its inventory. Cochran ran the execution desk at Coastal's commodity futures trading operation. Both men had worked at Coastal since the 1980's.

7. Krhovjak and Cochran were responsible for entering Coastal’s large volume of energy futures orders to the floor of the NYMEX, and placed futures orders for Coastal virtually daily by telephone.

8. During the relevant period, Krhovjak, Cochran and an individual who owned Refined agreed to misappropriate profitable trades belonging to Coastal by (i) allocating profitable transactions intended for Coastal to accounts they controlled; (ii) allocating unprofitable and less profitable transactions to accounts controlled by Coastal; and (iii) using advance knowledge of Coastal’s impending trading activity in the futures markets to trade ahead of anticipated resultant price movements.

9. The profitable, stolen Coastal trades were directed to an account in the name of Ocean East, Ltd. ("Ocean East"). The Ocean East account was controlled by another member of the scheme.

10. During the relevant period, Krhovjak and Cochran also traded ahead of Coastal's trades. Using their positions as traders for Coastal to obtain advance knowledge of trades Coastal planned to make on any given day, Krhovjak and Cochran deliberately

purchased and sold futures contracts for accounts controlled by their confederates while holding executable Coastal orders, thus taking the same side of the market as Coastal. As a result, Krhovjak and Cochran received better fills than Coastal did. Profits from Krhovjak and Cochran's trading ahead activities were also directed to the Ocean East account.

11. Krhovjak and Cochran received their share of the profits out of the Ocean East accounts by means of cash payments, and payments for entertainment, travel and gifts.

12. Krhovjak and Cochran misappropriated Coastal's trades by means of wrongful allocation or trading ahead on June 28, July 3, July 9, July 10, July 31, August 7, August 23, October 28, and October 29, 1996. As a result of these trades, the scheme participants obtained, jointly and severally, approximately \$89,228 in stolen profits from trades belonging to Coastal.

IV.

COUNT ONE

Violations of Section 4b(a)(i), (ii) and (iii) of the Act: Fraud in Connection with Futures Trading

13. Paragraphs 1 through 12 are realleged and incorporated herein by reference.

14. All orders to make and the making of contracts of sale of commodities for future delivery described herein were or may have been used for 1) hedging any transaction in interstate commerce in such commodity or the by-products thereof, or 2) determining the price basis of any transaction in interstate commerce in such commodity,

or 3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment of such future contracts.

15. From at least June 28, 1996 through October 29, 1996, based on the conduct alleged in Paragraphs 1 and 4 – 12 above, Respondents Krhovjak and Cochran, in or in connection with orders to make or the making of, contracts of sale of commodities for futures delivery, made or to be made for future delivery, made or to be made for or on behalf of other persons, where such contracts for future delivery were or could have been used for any of the purposes set forth above in paragraph 14, above:

- (i) cheated or defrauded, or attempted to cheat or defraud such persons;
- (ii) willfully made or caused to be made to such persons false reports or statements thereof, and willfully entered or caused to be entered for such persons false records thereof; and
- (iii) willfully deceived or attempted to deceive such persons in regard to such orders or contracts, or the disposition or execution of such orders or contracts, or in regard to acts of agency performed with respect to such orders or contracts or for such persons,

in violation of Sections 4b(a)(i),(ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i),(ii) and (iii) (2000).

16. Respondents Krhovjak and Cochran each engaged in those violations of Section 4b(a) of the Act deliberately, intentionally and willfully, with a view to profiting

from their violative transactions. Krhovjak and Cochran's activities worked to the detriment of Coastal.

17. Respondents Krhovjak and Cochran each committed a separate and distinct violation of the Act for each trade that was the result of their fraudulent allocation or trading ahead activities occurring on the days identified in Paragraph 14 above.

V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth in Parts I, II, III and IV above are true and, if so, whether orders should be entered in accordance with Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (2000).

Section 6(c) of the Act allows the Commission to (1) prohibit a respondent from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the Commission's Order, (2) if the respondent is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of that respondent, (3) assess against a respondent a civil monetary penalty of not more than the higher of \$100,000 or triple the monetary gain to the respondent for each violation (for violations which occurred before November 17, 1996), and (4) require restitution to customers of damages proximately caused by the violations of the respondent.

Section 6(d) of the Act allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

VI.

WHEREFORE IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Sections I, II, III, and IV above be held before an Administrative Law Judge in accordance with the Commission's Rules of Practice under the Act ("Rules"), 17 C.F.R. §§ 10.1 *et seq.*, at a time and place to be set as provided by Section 10.61, 17 C.F.R. § 10.61, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107, 17 C.F.R. §§ 10.81 through 10.107.

IT IS FURTHER ORDERED that each Respondent shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service pursuant to Section 10.23 of the Commission's Rules, 17 C.F.R. § 10.23, and shall serve two copies of such Answer and of any documents filed in these proceedings upon W. Derek Shakabpa, Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. If any Respondent fails to file the required Answer, or fails to appear at a hearing after being duly notified, such Respondent shall be deemed in default and the proceedings may be determined against him upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on each Respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Commission's Rules, 17 C.F.R. § 10.22.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecutorial functions in

this or any factually related proceedings will be permitted to participate or advise the decision in this matter except as a witness or counsel in a proceeding held pursuant to notice.

By the Commission.

Jean Webb
Secretary to the Commission
U.S. Commodity Futures Trading
Commission

Dated: October 26, 2001